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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ITEL CORPORATION
U.S. TRUST COMPANY OF NEW YORK/
ITEL CORPORATION, AGENT,
Petitioners

v.

DISTRICT OF COLUMBIA

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTION PRESENTED

Must the Government of the District of Columbia be presumed to have concurrent jurisdiction with Congress over property within the geographic boundaries of the District of Columbia, including federally-owned areas used exclusively for the national government, such that the District Government may levy personal property taxes under D.C. Code § 47-1507 against personalty located in such exclusive federal enclaves?

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1a to 11a)[1] is reported at 448 A.2d 261 (1982). No opinion was issued to accompany the Order of the Superior Court of the District of Columbia, Tax Division (Pet. App. 12a to 13a). The denials of Petitioner ITEL Corporation's tax refund claims by the District of Columbia Department of Finance and Revenue are unpublished (Pet. App. 14a to 15a).

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[1] "Pet. App." refers to the appendix attached to this Petition for Writ of Certiorari.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 1a to 11a) was entered on July 21, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Art. I, § 8, cl. 17 of the U.S. Constitution provides that [Congress shall have the power]:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

Section 47-1507 of the D.C. Code (1981) provides:

> On all tangible personal property, assessed at fair cash value (over and above the exemptions provided in § 47-1508), including vessels, ships, boats, tools, implements, horses, and other animals, carriages, wagons, and other vehicles, there shall be paid to the Collector of Taxes of the District of Columbia the rate of tax provided by law. Effective July 1, 1972, the rate of tax applicable to the average stock-in-trade of dealers in general merchandise shall be two-thirds of the rate of tax established by the Council of the District of Columbia for application generally to personal property subject to taxation for the fiscal year ending June 30, 1972; and effective July 1, 1973, the rate of tax applicable to the average stock-in-trade of dealers in general merchandise shall be one-third the rate of tax established by the Council of the District of Columbia to be applied generally to personal property subject to taxation for the fiscal year ending June 30, 1972; and effective July 1, 1974, the tax on the average stock-in-trade of dealers in general merchandise is repealed.

STATEMENT OF THE CASE

A. Factual Background

This case arises out of the denial by the Department of Finance and Revenue of the Government of the District of Columbia of claims by Petitioner ITEL Corporation (ITEL)[2] for refund of certain personal property taxes paid by ITEL pursuant to assessments by the government of the District of Columbia (District Government) under D.C. Code § 47-1507 (1981)[3] in the tax years 1978, 1979 and 1980. These tax payments, totaling $500,261.27 over the three year period, were made as a result of levies against personal property owned by ITEL and leased to the United States for its use. Critical to this action is the fact that, at all times relevant to the ITEL tax refund claim, the taxed personal property was located in buildings owned by the United States and on real property owned by the United States, that is, located in exclusive federal enclaves within the District of Columbia.

ITEL's claim for a refund of District of Columbia personal property taxes was timely filed with the Department of Finance and Revenue pursuant to D.C. Code § 47-3310 (1981) (formerly § 47-2413). This claim was based on ITEL's assertion that the District Government is without authority to assess such personal property

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[2] These claims for refund were filed by ITEL on its own behalf and on behalf of the United States Trust Company of New York. Due to certain financing arrangements entered into by ITEL, title to some of the personal property against which the disputed taxes were assessed was held by United States Trust Company of New York during fiscal years 1978 and 1979. However, ITEL holds the rights to all tax refunds related thereto, and all references to ITEL's property or claims hereafter include those which were formerly held by United States Trust Company.

[3] At the time of the assessment of the taxes under dispute, this section was codified as D.C. Code § 47-1207 but was recodified as referenced above in 1981.

taxes against property located in buildings in exclusive federal enclaves. Such federal areas within the District are under the sole control of congress, and the District Government may exercise authority in these areas only where Congress has explicitly consented to such exercise. There is no explicit consent related to the D.C. Code § 47-1507 personal property tax.

In support of its claim, ITEL relied upon the United States Constitution, Art. I, § 8, cl. 17, several Congressional enactments applicable, in whole or in part, to the District of Columbia, and various judicial interpretations of the nature of exclusive federal jurisdiction and the rules of construction applicable thereto. These grounds for refund were also asserted by ITEL in its petition to the Superior Court of the District of Columbia, Tax Division, appealing the Department of Finance and Revenue denial of the refund claims, and again to the District of Columbia Court of Appeals in the action resulting in the judgment below.

B. The Nature of The District of Columbia Government

This case involves the nature and extent of the governmental authority delegated by Congress to the District Government. Although recent enactments, particularly the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 774, *et seq.* (the Home Rule Act), reflect the limited scope of the District Government's authority, this municipal, purely local mandate has been evident throughout the District's history.

1. The District of Columbia was created pursuant to Art. I, § 8, cl. 17 of the United States Constitution, by which Congress was granted power of "exclusive legislation" over the area which was to become the "Seat of the Government of the United States," and the Act of July 16, 1790, 1 Stat. 139, by which Congress accepted the cession from the states of Maryland and Virginia of

certain territory, located on the Potomac River, which became on the first Monday in December, 1800, the nation's capital. Although Congress was granted the power of "exclusive legislation" over such area,[4] the Act of July 16, 1790, provided that the laws of Maryland and Virgiina applicable to the lands which became the District of Columbia would continue in force after the creation of the District, and that the Federal Government would acquire over time, by purchase or otherwise, "such quantity of land on the eastern side of said [Potomac] River, within the said District, as the President shall deem proper for the use of the United States . . . ." 1 Stat. 139. Accordingly, local control and previous private ownership of land within the District continued except to the extent that portions of the District real property were so acquired by the national government. Such federally acquired property came under *exclusively* Congressional control. *Metropolitan Railroad Company v. District of Columbia*, 132 U.S. 1 (1889).

2. By the Act of May 3, 1802, 2 Stat. 195, Congress incorporated the "City of Washington" and delegated to the city's Mayor and common council certain limited powers related to the administration of local matters and maintenance of local facilities and safety. This loosely organized local governmental structure was "strictly municipal in its character" and dealt with purely local matters. Congress retained the sole responsibility for protection and maintenance of federal buildings and grounds. *Id.*, 132 U.S. at 233.

By the Organic Act of February 21, 1871, 16 Stat. 419, the local government became the municipal corporation, the District of Columbia. This evolution in the legal identity of the local government did not expand the scope

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[4] "Exclusive legislation" is now generally referred to as exclusive jurisdiction. See Surplus Trading Company v. Cooke, 281 U.S. 674 (1930).

of District Government responsibility;[5] the municipal government continued to act without day-to-day Congressional supervision as administrator of laws passed by Congress concerning *local* matters in the District, with the Federal Government retaining responsibility for maintenance and control of federal land and facilities.[6] *District of Columbia v. John R. Thompson Company, Inc.*, 346 U.S. 100, 111 (1952). However, the District Government was a separate legal and political entity, distinct from the national government from which it drew, and continues to draw its municipal authority. *Metropolitan Railroad Company v. District of Columbia, supra*, 132 U.S. at 234.

3. In 1973, by the Home Rule Act, Congress delegated to the District substantial authority to legislate independently with regard to local matters. 87 Stat. 785-792. The Home Rule Act policy statement provides:

> [T]he intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by registered qualified electors in the District

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[5] See Stoutenburgh v. Hennick, 129 U.S. 141 (1889). The principal purpose of the 1871 enactment was the delegation to the local government of authority to legislate in purely local matters. This self-governing authority was rescinded, however, by the Act of June 20, 1874, 18 Stat. 116.

[6] For example, control of the Capitol grounds was, and continues to be vested in the Architect of the Capitol, except that the District Government may enter the Capitol grounds to maintain certain roads or repair utilities, or, *with the approval of the Architect*, to construct or alter utility services. D.C. Code § 9-106 (1981); 40 U.S.C. § 193a. *See also* 40 U.S.C. § 184a(d), which directs the transfer of jurisdiction over certain real property from the District Government to the Architect, which property is to be used for a new Congressional Page School, and 3 U.S.C. § 202 (Secret Service, Uniformed Division) and D.C. Code §§ 4-201-208 (Park Police) and 9-115 (1981) (Capitol Police) establishing separate police forces for federal areas within the District.

> of Columbia; *grant to the inhabitants of the District of Columbia powers of local self-government*; ot modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and *to the greatest extent possible*, consistent with the constitutional mandate, *relieve Congress of the burden of legislating upon essentially local District matters.* [emphasis added]

87 Stat. 777. This statement reflects the intent of Congress to continue the exclusively local nature of the District Government authority.

Similarly, the Home Rule Act reflects the continued withholding of District authority in exclusively federal areas. Specifically, the Home Rule Act designated a "National Capital Service Area" (the Service Area), an exclusive federal enclave encompassing the area from the Capitol grounds to the White House, 40 U.S.C. § 136, and provided a mechanism by which the Federal Government could enter into agreements with the District Government for the provision to that area of services which the District Government would not otherwise provide because the area was outside its local governmental responsibilities. 87 Stat. 820, 822.[7]

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[7] When introducing the amendment to the Home Rule Act which created the National Capital Service Area, Representative Green of Oregon stated: "The amendment itself intends to include *all of the Federal land but it does not include one area of private land*—not one acre. . . . [Washington, D.C.] was intended as a city that would be different from all other cities in the country . . . the nation's Capital should be ever preserved as just that—*under federal control—not local*—and belonging equally to those residents three miles away or residents of Florida, Alaska or Iowa.

Under this kind of a Federal City, the President would appoint a Director of Federal Area Services who would be responsible for police protection, fire protection, sanitation, the streets and access roads." (Emphasis added) 119 Cong. Rec. H8831 (1973).

The Home Rule Act continued in force previous Congressional enactments related to the District of Columbia, 87 Stat. 820, but expressly prohibited the District Government from enacting any new law "which concerns the functions or property of the United States." 87 Stat. 813-814. In sum, although the Home Rule Act authorized the District Government to legislate for local areas of the District (areas owned or controlled by private individuals or the District Government itself), it also reinforced the historical limitation on the authority and responsibility of the District Government to act in matters concerning exclusive federal enclaves.

4. Finally, judicial review of the authority of the District Government has consistently affirmed its municipal character. It has also reflected the need to interpret Congressional delegations of authority to the District Government as subject to the limitations of authority on the several states vis-a-vis federal functions and activities. Thus, in *Stoutenburgh v. Hennick, supra*, this Court held that the District Government could not enforce licensing provisions in a manner which imposed a burden on interstate commerce. Similarly, in *District of Columbia v. John R. Thompson, Company, Inc., supra*, the police power delegable to the municipal District Government was held to be "as broad as the police power of the state." 346 U.S. at 109. More recently, in *General Motors Corp. v. Districts of Columbia*, 380 U.S. 553 (1965), the restrictions imposed on states for apportionment of income were used to interpret the District corporate income tax laws, and in *United States v. District of Columbia*, 669 F.2d 738 (D.C. Cir. 1981), the U.S. Court of Appeals specifically found that the Congressionally-enacted District sales and use tax authority was intended "to limit the District's taxing power in the manner that State taxation authority is limited." 669 F.2d at 746.

C. The Court of Appeals Opinion

The Court of Appeals below held that the District of Columbia personal property tax authorized under D.C. Code § 47-1507 "is applicable to privately-owned personalty located on federally-owned land in the District." (Pet. App. 1a). The Court of Appeals decision relied principally on the general language of this taxing statute and the absence of an explicit exemption for such personal property in D.C. Code § 47-1508. (Pet. App. 3a).

1. The judgment of the Court of Appeals was based on its conclusion that the District Government has jurisdiction concurrent with that of the Federal Government with regard to *all* geographic areas of the District, whether federally or privately owned. As the Court stated: "Absent a contrary indication in the legislative history, a general statute [for the District] is to be applied to private parties throughout the District, *regardless of whether the locale of the relevant conduct or personal property is federal or private land.*" (Emphasis added). (Pet. App. 11a, n.10). The Court of Appeals ruled, in effect, that questions regarding the authority of the District Government are to be resolved applying a presumption favoring a delegation of control and authority to the District Government.

2. The Court of Appeals' analysis specifically rejected, as a matter of law, the possibility that acts of the District Government could improperly interfere in any way with federal activities within the District if those acts were undertaken pursuant to laws passed by Congress. In the context of legislation concerning the District Government, it found inapplicable the rules of strict statutory construction fashioned by the courts since *M'Culloch v. Maryland*, 17 U.S. 316 (1819) when determining the scope of Congressional consent to impingement upon the exclusivity of federal jurisdiction. *United States v. Unzueta*, 281 U.S. 138 (1930); *Van Brocklin v. Anderson*, 117 U.S. 151 (1886). The court below simply found:

> The tax at issue here was enacted not by an independent sovereign, or even a partially-independent governmental unit such as the District of Columbia government [footnote omitted], but by the Congress itself. It can hardly be said that this amounts to an intrusion on federal perogatives.

(Pet. App. 4a).

3. The court below also noted that the creation of the Service Area by Congress in the Home Rule Act had no relevance to the issue of whether Congress intended to preserve the exclusivity of its control over wholly federal areas within the District of Columbia, and the opinion does not address the extensive Home Rule Act legislative history which would limit the authority of the District Government. Similarly, the court did not reconcile its finding of District-wide concurrent jurisdiction between Congress and the District Government with provisions in the United States Code related to transfers of jurisdiction over real property in the District of Columbia between those two governmental entities. *See* 40 U.S.C. §§ 122 and 184a(d). Finally, the court found significant support for its holding in the fact that no issue related to exclusive federal jurisdiction was raised or addressed by this Court in the recent case of *United States v. New Mexico*, 102 S. Ct. 1373 (1982).

REASONS FOR GRANTING THE PETITION

The court below created a presumption that the District Governemnt has jurisdiction concurrent with that of Congress over *all* geographic areas of the District on matters within the scope of general Congressional delegations of authority. In so holding, the Court of Appeals created a rule of interpretation of statutes related to the District of Columbia which runs contrary to established principles of law and statutory construction, and thereby threatens to alter the fundamental nature of the relation-

ship between the District Government and the Federal Government.

1. It is a long established rule of law that delegations of authority to municipal bodies are to be strictly construed. *Atkin v. State of Kansas*, 191 U.S. 207 (1903). The Court of Appeals holding reverses this rule for such delegations to the municipal District Government.

2. This Court has repeatedly found that, where a lesser Governemnt seeks to tax even a private party within an exclusively federal enclave, that exercise of taxing power must be denied in the absence of express Congressional consent to the tax levy. *Humble Pipeline Co. v. Waggoner*, 376 U.S. 369 (1964); *Surplus Trading Co. v. Cooke*, 281 U.S. 647 (1930). Without addressing the principle that the national government must be free from unwanted interference by lesser governmental entities, the Court of Appeals rejected such a rule of construction. The decision below makes interference with the national government by the District Government essentially a legal impossibility, thereby forcing Congress to retrieve its exclusive authority legislatively, on a case-by-case basis, so as to accommodate the needs of the national government. Moreover, the need for Congressional clarification of District Government authority cannot be met through Congress' power, under § 602(c) of the Home Rule Act, 87 Stat. 814, to veto City Council actions because the court's presumption relates to existing Congressional enactments, not new legislation.

For example, relying on the Court of Appeals' presumption of authority, the District Government can now reasonably assert the power to tax all personalty not expressly exempt under D.C. Code § 47-1508 (1981).[8] This

[8] D.C. Code § 47-1508 exempts only personalty of certain nonprofit organizations, certain works of art, certain motor vehicles and "household belongings" not used in "the engaging or carrying on of any trade, business, profession, location, calling, rental property,

will result in the taxation of privately-owned personal property used in carrying on the professional work of members of Congress and located in their Congressional offices, of Government workers in their offices, of military personnel in their offices at installations such as Bolling Air Force Base and Fort McNair, and of members of the federal judiciary. Equally significant, the District Government can now rely upon the similar absence of an exemption for *federal* personal property in D.C. Code § 47-1508, together with the explicit exemption for federal real property in D.C. Code § 47-1002 (1981) and the explicit exemption in the predecessor District of Columbia personal property tax statute (Act of March 3, 1877, 18 Stat. 396), to authorize the taxation of federal personal property.

3. The most recent Congressional expression of intent related to the authority of the District of Columbia over federal areas appears in the legislative history of the Home Rule Act. Specifically, though the Committee reports are silent on this issue, the debates relating to the creation of the Service Area are replete with comments such as those of Mrs. Green of Oregon, who sponsored the amendment creating the Service Area:

> The thing that it [the Service Area Amendment in the Presidential Study mandated therein] does assure is that the Capitol, the Senate and the House Office Buildings, shall *never be under the elected Mayor, the elected Council and the Appointed Chief of Police.* [emphasis added]

119 Cong. Rec. H8832 (1973); *see also* Mrs. Green's similar comments at 119 Cong. Rec. H8798 (1973); or those of Representative Broyhill:

> If this bill does give self-government to the people of the District of Columbia, there is no reason what-

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commercial activity, or any other activity carried on or engaged in for livelihood or profit."

> soever why they should have any more say or any more control over an area that could be clearly defined as exclusively for the federal use than the rest of the people in this country.

119 Cong. Rec. H8833 (1973); or those of Representative Fraser, in voicing opposition to the need for a specifically-designated Service Area:

> The point about these Federal buildings in the Federal area is that *they are already under Federal control*, and the Federal control is exercised by the Department of the Interior through the Park Service including the Mall and the monuments, through the General Services Administration in maintaining the buildings, the regular Federal buildings, and the Architect of the Capitol, who runs the Capitol and the Capitol grounds. [emphasis added]

119 Cong. Rec. H8832 (1973). As clear enunciations of the sponsors of legislation, these comments should have been given significant weight. *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976). They were ignored.

4. Problems related to an overly expansive interpretation by the District Government of its authority have already arisen and required the Federal Government to resort to litigation to prevent interference with its activities. *See, for example, District of Columbia v. United States Capitol Historical Society*, C.A.No. 81-3119, (D.D.C. 1982) (attempted taxation by the District Government of a federal instrumentality operating in the National Visitors Center). This Court should also take specific notice of *United States v. District of Columbia*, C.A. No. 81-1532, (D.D.C.-pending) in which the *House of Representatives* is challenging the authority of the District Government to tax personalty located on the exclusively federal Capitol grounds.

Thus, although this Court normally will not disturb lower court decisions concerning the import of legislation

governing the internal affairs of the District, *General Motors Corp. v. District of Columbia*, *supra*, 380 U.S. at 556, the Court of Appeals opinion in this case represents a precedent of far-reaching consequences on the scope of the authority of the District Government and the ability of the national government to operate without interference from the municipal government which it created to deal with purely local matters. This Court, in *O'Donoghue v. United States*, 289 U.S. 516 (1933), described Congressional authority granted by U.S. Constitution Art. 1, § 8, cl. 17 as:

> . . . an unqualified grant of permanent legislative power over a selected area set apart for the enduring purposes of the general Government, *to which the administration of purely local affairs is obviously subordinate and incidental.* District is not a (ephemeral) subdivision of the 'outlying dominion of the United States,' but the Capitol—the very heart—of the Union itself to be maintained as a 'permanent' abiding place of all its supreme departments, and within which the immense powers of the general government were destined to be exercised for the great and expanding population of 48 states, and for future immeasurably beyond the prophetic vision of those who design and created it. [emphasis added]

Id. at 539.

The decision below threatens to permit the District Government to raise itself well above the congressional-intended "subordinate and incidental" role of regulating municipal matters *outside* exclusively federally-owned areas in which the Federal Government has sole jurisdiction. It allows the municipal body to tax private personalty in exclusively federal enclaves, a power possessed by none of the sovereign states. It also gives judicial authorization to interpret expansively the authority of the District Government to the potential detriment of the national government.

CONCLUSION

The Petition for a Writ of Certiorari should be granted in order to preserve the exclusively federal jurisdiction over federally-owned areas within the District of Columbia.

Respectfully submitted,

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APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 81-672

ITEL CORPORATION and
UNITED STATES TRUST COMPANY OF NEW YORK,
ITEL CORPORATION, AGENT,
Appellants,

v.

DISTRICT OF COLUMBIA,
Appellee.

Appeal from the Superior Court of the
District of Columbia
(Hon. John D. Fauntleroy, Trial Judge)

(Argued February 24, 1982 Decided July 21, 1982)

Robert H. Koehler, with whom *Richard M. Stolbach* was on the brief, for appellants.

Richard L. Aguglia, Assistant Corporation Counsel, with whom *Judith W. Rogers*, Corporation Counsel, and *Charles L. Reischel* and *James E. Lemert*, Deputy Corporation Counsel, were on the brief, for appellee.

Before NEWMAN, *Chief Judge*, and KERN and BELSON, *Associate Judges*.

NEWMAN, *Chief Judge*: The sole issue in this case is whether the District of Columbia personal property tax is applicable to privately-owned personalty located on federally-owned land in the District. Appellant ITEL Corporation contends that federally-owned areas within the District are "federal enclaves" and that the personalty tax must be read as not reaching private property located within them. But regardless of how such

areas are characterized, all parties must concede that Congress has the power to authorize the application of a tax therein. We conclude that it has done so in D.C. Code 1981, § 47-1507, and therefore affirm the Tax Division's order denying a refund.

The relevant facts are simple and undisputed. ITEL Corporation is in the business of leasing data processing equipment.[1] Many of its machines are leased by the United States government and located in various federal buildings within the District. In fiscal years 1978, 1979, and 1980, ITEL paid a total of just over half a million dollars in taxes, penalties, and interest on such property.[2] Refund claims covering those assessments were denied by the District of Columbia Department of Finance and Revenue by letter of November 27, 1979. ITEL subsequently filed a petition for refund in the Tax Division of the Superior Court. Inasmuch as there were no disputed material facts, the case was submitted on cross motions for summary judgment. On April 27, 1981, the trial court entered an order denying summary judg-

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[1] Due to certain financing arrangements entered into by ITEL, title to some of the relevant equipment was held by appellant United States Trust Company of New York during fiscal years 1978 and 1979. However, ITEL now holds the rights to all tax refunds sought in the present case. Hereafter, all references to ITEL's property or claims include those which were formerly held by United States Trust.

[2] The exact figure is $500,261.27. Of this total, $446,294.87 represents taxes, penalties, and interest associated with property located within the National Capital Service Area. *See* D.C. Code 1981, § 9-142(e). The remainder derives from property within the District, but outside the National Capital Service Area. Although appellant believes that the statute creating the National Capital Service Area is relevant to the proper construction of the tax at issue here, it does not contend that the assessibility of particular property depends on whether it is within the Service Area. Since our analysis and conclusions also apply equally to both groups of property, our discussion addresses the entire refund claim as a single unit.

ment for appellant and granting summary judgment for the District of Columbia. ITEL now appeals the denial of its refund claim.

Congress has imposed a tax on privately-owned personal property in the District of Columbia for over a century. The current version of that tax is codified at D.C. Code 1981, § 47-1507. It provides in pertinent part: "On all tangible personal property, . . . (over and above the exemptions provided in § 47-1508) . . . there shall be paid . . . the rate of tax provided by law." None of the exemptions listed in § 47-1508 refers in any way to personalty located in federal buildings. On its face, the statutory language encompasses the property that ITEL contends is exempt.

Nor does the legislative history of either section indicate an intended exemption for such property. On the contrary, this history, although sparse, suggests that the tax was meant to reach all private business assets within the District.

> It is inconceivable that Congress will permit personal property in the District of Columbia to remain untaxed. That capital employed remuneratively under the special protection of incorporation laws shall pay nothing for the support of the government has never been the practice in any State or Territory of the Union; and Congress has never contemplated such exemption in the District of Columbia. All property, both real and personal, should pay its just share for the support of the government. [S. REP. No. 1035, 57th Cong., 1st Sess. 4 (1902).]

Thus, on the basis of both the statutory language and its history, one would have to conclude that ITEL's property is not exempt.

To avoid this result, ITEL argues for an implied exemption for property located on federal land. This exemption is said to be necessary to protect the national

sovereign from "unwanted intrusions" by "lesser governmental entities" in areas of primary federal interest. This premise draws its support largely from cases of questionable relevance to the District of Columbia, as will be discussed below. But even if one accepts the premise, the argument suffers a fatal flaw. The tax at issue here was enacted not by an independent sovereign, or even a partially-independent governmental unit such as the District of Columbia government,[3] but by the Congress itself. It can hardly be said that this amounts to an intrusion on federal prerogatives.

Precedential support for this conclusion is found in *Mercury Press v. District of Columbia*, 84 U.S.App.D.C. 203, 173 F.2d 636 (1948), *cert. denied*, 337 U.S. 931 (1949). That case upheld the application of the D.C. personalty tax to imported goods, still in the original package, located in a local warehouse pending transport to destinations outside the District. Whereas a state might not be able to tax such imports, D.C. could, since it draws on Congress's constitutional authority to tax imports and exports. The court recognized that there are not two Congresses, one acting as the national legislature and another serving as the District legislature. An act of Congress, although local in scope, is nevertheless not analogous to a state law enacted by an independent legislature.

Since Congress unquestionably has the power to do what § 47-1507 and its legislative history apparently mandate, ITEL must find a means of avoiding straightforward statutory construction. It argues for a presumption that D.C. tax statutes are not applicable to private property located on federal land. Under this proposed rule of construction, a tax statute does not encompass such property unless it explicitly so states. Broad lan-

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[3] Under the Home Rule Act, Congress is authorized to disapprove acts of the District of Columbia Council within thirty days of their enactment. D.C. Code 1981, § 1-233(c).

guage like that contained in § 47-1507 would thus be read so as not to reach appellant's computers.

ITEL's argument for this presumption begins with Art. I, § 8, cl. 17 of the U.S. Constitution. It provides that Congress shall have the power

> [t]o exercise exclusive Legislation in all Cases whatsoever, over such District . . . as may . . . become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings. . . .

This clause provides the constitutional underpinning for the establishment of certain "federal enclaves" within which congressional authority to legislate, including the authority to tax property, is exclusive.

But the language of this clause makes it readily apparent that ITEL's reliance on it is misplaced. The District of Columbia is treated differently from federal enclaves within state boundaries, such as various military bases. Within state boundaries, federal enclaves are areas *owned* by the federal government and purchased with the *consent* of the state legislature. States may withhold consent and thereby retain jurisdiction.[4] In contrast, *all* parts of the District of Columbia are within exclusive congressional jurisdiction,[5] regardless of whether they are privately- or federally-owned. If a presumption or implied exemption is to be derived from Article I, it would have to apply to the entire District. If such a presumption existed, Congress overcame it by enacting

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[4] *Humble Pipe Line Co. v. Waggoner*, 376 U.S. 369 (1964), *Surplus Trading Co. v. Cooke*, 281 U.S. 647 (1930).

[5] Of course the Congress can delegate authority to legislate for the District of Columbia, as it has done in the Home Rule Act. D.C. Code 1981, § 1-227(a).

§ 47-1507, which would otherwise be completely without effect.

ITEL nevertheless attempts to have § 47-1507 treated as if the District were a state and the statute had been enacted by a state legislature. Primary reliance is placed on two cases regarding state taxes in federal enclaves, *Surplus Trading Co. v. Cooke*, 281 U.S. 647 (1930), and *Humble Pipe Line Co. v. Waggoner*, 376 U.S. 369 (1964). *Surplus Trading* involved a state personal property tax assessed on surplus blankets bought by a private dealer, but not yet removed from a military base on the assessment day. The Supreme Court held that the general tax statute could not be applied to that property, regardless of statutory intent, since the base was within the exclusive federal jurisdiction under Article I. The base came within exclusive federal jurisdiction only because the state legislature had so consented, not merely because it was federally-owned. The case thus does *not* stand for the proposition that federal ownership ipso facto entails exclusive jurisdiction, but the reverse, that federally-owned land is normally subject to local jurisdiction. The Court's analysis employs no presumption, explicit or implicit, of any kind; state consent is either present or it is not.

Humble Pipe Line Co. v. Waggoner, *supra*, stands for the same general proposition, with the result that a state ad valorem tax could not be applied to private property on an air force base, where the state legislature had ceded exclusive jurisdiction to the federal government. The Court noted that even where federal jurisdiction is exclusive, Congress may consent to the assessment of state taxes. Since § 47-1507 was enacted by Congress, it would constitute congressional consent if any were required. In the words of the D.C. Circuit, "[i]f the consent restriction applies to the statute here involved [§ 47-1507], it has been met, as consent could be evidenced in no clearer fashion than by the fact of enactment itself." *Mercury Press v. District of Columbia*, *supra* at 204, 173 F.2d at

637. Thus even if the analysis used in state cases were applicable here, the result would still be that the tax could be applied to personal property on federal land.[6]

ITEL also cites *United States v. District of Columbia*, 669 F.2d 738 (D.C. Cir. 1981), in support of its conclusion that D.C. property taxes should be treated in a way similar to state taxes. The U.S. government hired a private contractor to organize a conference in a D.C. hotel on a cost-plus basis. Part of the cost passed on was the D.C. sales tax on the various hotel charges. The court first concluded that under the "legal incidence" rule,[7] a state could have collected the tax even though the U.S. government ultimately bears the cost. It further decided that Congress, in enacting the D.C. tax code, did not intend to subject the U.S. to any greater or lesser scope of potential tax liability than it faces outside the District.

But treating the District as if it were a state would not aid appellant. As discussed above, states may normally impose taxes on privately-owned personal property

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[6] It is worth noting that personalty taxes applied to equipment leased by non-taxable entities and located on their land have been upheld under state constitutional provisions. In *Kunes v. Samaritan Health Service*, 121 Ariz. 413, 590 P.2d 1359 (1979) (en banc), for example, Arizona's ad valorem property tax was upheld as applied to equipment leased to tax-exempt nonprofit hospitals. Inasmuch as the taxed equipment was the property of private profitmaking businesses, and not the tax-exempt hospitals, it could not fall within the tax immunity that the state constitution authorized the legislature to extend. The result thus turned on ownership of the property, not whether it was used by a tax-exempt institution or located on its tax-exempt land. *See also University of Utah v. Salt Lake County*, 547 P.2d 207 (Utah 1976).

[7] The legal incidence of a tax falls on the party who is liable for it, against whom the collecting authority could obtain a judgment for nonpayment, regardless of the fact that the cost may ultimately be borne by some third party. In the case of a sales tax like that involved in *United States v. District of Columbia*, the legal incidence is on the buyer. In the case of a property tax, it is on the owner.

on federally-owned land, and even where there is exclusive jurisdiction, congressional consent waives it. *United States v. District of Columbia* also fails to advance appellant's cause because it deals with the degree to which the federal government is made to bear the burden of District taxes. In contrast, ITEL's theory rests on the *location* of the taxed property or activity, a circumstance that is unrelated to the rationale applied in *United States v. District of Columbia*.

Indeed, to the extent that the case is helpful at all, it militates in favor of denying a refund to ITEL. It shows that the federal government's protection from D.C. taxes is not territorial, but based on the incidence of the tax. Moreover, the intrusion on federal interests is much more substantial where, as in *United States v. District of Columbia*, the government bears the entire financial burden of the tax, than where the only connection is that the assessed property happens to be located on federal land.[8] Finally, the case illustrates that no special statutory authorization is required for the general District sales tax to be applied in a specific instance where federal interests are arguably impinged upon. This is consistent with our conclusion that no explicit additional authorization is required in order for the personal property tax to be applied to private assets on federal land.

Shortly after this case was argued, the Supreme Court handed down its decision in *United States v. New Mexico*, 50 U.S.L.W. 4326 (1982). For present purposes, the case is more significant for what it does *not* address than for what it does. It involves a constitutional challenge to the application of two New Mexico taxes to government contractors operating on federally-owned property. One is levied on the gross receipts of all those doing busi-

[8] It is probably the case that some of the cost of the property tax is ultimately borne by the government through its lease payments. But this is not a relevant factor in the analysis, since ITEL's theory would apply equally to personal property located on federal land, but not leased to the government.

ness within the state. The other is a compensating use tax imposed on property acquired out of state in a transaction that would have been subject to the gross receipts tax if it had occurred in New Mexico. The state sought to apply these taxes to federal contractors that manage, or perform construction work at federal research laboratories. According to ITEL's terminology, these federally-owned properties, on which government projects are carried out, would have to be deemed "federal enclaves." However, the court held that the imposition of taxes on the activities of these private entities on federal land, and on the property they used in connection therewith, did not offend the Constitution.

Apparently the petitioners in that case recognized, as they should, that the state taxes are operative in federally-owned areas, absent consent to exclusive federal jurisdiction. The tax statutes do not explicitly recite that they are to be applied on federally-owned lands. *See* N.M. Stat. Ann. §§ 72-16A-4, 72-16A-7 (Supp. 1975).[9] Yet it is apparent that neither the parties nor the Court thought it possible that this would bar the operation of the tax. Instead, the judicial analysis proceeded by identifying the incidence of the tax, then inquiring whether any of the taxable entities was an "agency or instrumentality so closely connected to the Government that the two cannot realistically be viewed as separate entities. . . ." 50 U.S.L.W. at 4330. Finding that none of the petitioning companies fit this description, the Court concluded that the taxes could validly be imposed on them. The case thus underscores the unhelpfulness of the state tax cases in establishing by analogy a presumption against the application of District of Columbia taxes to private parties on federal land. Indeed, a presumption against District taxes, especially those enacted by Congress, would be a constitutional anomaly since the intrusion on federal interests is much greater under the

[9] In conformity with the Supreme Court opinion, we cite the codification referred to by the parties rather than that now in force. *See* N. M. Stat. Ann. §§ 7-9-1 *et seq.*

facts of *United States v. New Mexico*. In that case, the tax was imposed by an independent state legislature—a separate sovereign—and the taxes were passed on directly to the federal government.

Having found no persuasive basis for deviating from § 47-1507's plain meaning,[10] we conclude that the Dis-

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[10] Appellant also raises some subsidiary issues which can be disposed of briefly. It notes that there is no explicit exemption of federally-owned personal property in either § 47-1507 or § 47-1508, although all parties agree that such property is not subject to the tax. It contends that if ITEL is denied a refund on the ground that there is no explicit applicable exemption, federal property must also be taxed. This is a complete non sequitur. By no stretch of the imagination does the possibility that the exemption for U.S. property may be implicit require that there also be an implied exemption for appellant's property. As we have shown above, there is no persuasive basis for establishing an implicit exemption or presumption in favor of private personalty on federal land.

ITEL contends that Congress' usual practice has been to make a specific provision for every instance in which the power of the District government is intended to reach into federally-owned areas within the District. However, Congress's "usual practice" is neither so extensive nor so consistent as to justify a presumption in appellant's favor.

Appellant cites D.C. Code 1981, § 4-116, which provides:

> The provisions of the several laws and regulations within the District of Columbia for the protection of public or private property and the preservation of peace and order are extended to all public buildings and public grounds belonging to the United States within the District of Columbia.

However, our decision that the D.C. criminal code applies to acts committed on federal land did not turn upon the existence of an explicit provision, although § 4-116 was cited in a footnote. *McEachin v. United States*, D.C.App., 432 A.2d 1212, 1216 n.7 (1981).

ITEL also invokes the Buck Act, 4 U.S.C. §§ 104-110 (1976), which is an explicit authorization of state sales and income taxes on activities in federal areas. But the legislative history of the Act indicates that, far from supporting a presumption against application of D.C. taxes on federal lands, the drafters assumed the converse.

> Subsection (d) defines the term 'State' to include any Territory or possession of the United States. The District of Columbia

trict of Columbia personal property tax is applicable to private personalty located on federally-owned land.

Affirmed.

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was not included in the definition since Congress is the local legislature for the District and any sales, use, or income taxes enacted for the District are applicable in all areas within said District. [S. REP. No. 1625, 76th Cong., 3d Sess. 5 (1940).]

D.C. Code 1981, § 1-233(a) is also said to support a presumption of noninterference in areas of predominant federal interest. It provides in pertinent part:

> The Council shall have no authority . . . to:
>
> (1) Impose tax on property of the United States or any of the several states;
>
> . . .
>
> (3) Enact any act, or enact an act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District; . . . .

But the absence of any exemption for personal property on federal land argues more persuasively for the contrary result.

Appellant also relies on the part of the Home Rule Act establishing the National Capital Service Area, in which most but not all of ITEL's property is located. D.C. Code 1981, § 9-142. *See* note 2, *supra*. ITEL interprets the statute as extending limited District authority (not including tax authority) into certain federally-owned areas, where it would not reach without such explicit authorization. In fact, this part of the Home Rule Act serves to add some federal bureaucracy to the existing D.C. bureaucracy in order to *ensure* adequate services, not to *authorize* the provision of services by the District. The statute explicitly recognizes that D.C. laws and regulations were *already* in effect within the newly created Service Area, and would continue in effect after passage of the Act. D.C. Code 1981, § 9-142(h).

In sum, none of the congressional enactments to which we have been referred provides a persuasive basis for erecting a presumption against the application of a D.C. tax statute in federal areas. Rather, the intent behind each statute must govern. Absent a contrary indication in the legislative history, a general statute is to be applied to private parties throughout the District, regardless of whether the locale of the relevant conduct or personal property is federal or private land.

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

TAX DIVISION

Docket Nos. 3006
and 3007

ITEL CORPORATION
U.S. TRUST COMPANY OF NEW YORK/ITEL
CORPORATION, AGENT
One Embarcadero Center
San Francisco, California
Petitioners,

v.

DISTRICT OF COLUMBIA,
Respondent.

[Filed Apr. 29, 1981]

ORDER

Upon consideration of the motions for summary judgment filed by the parties herein, the statement of material facts as to which it is contended there is no genuine issue, and the memoranda of points and authorities filed in support thereof, it is, this 27th day of April, 1981.

ORDERED: That the motion of respondent District of Columbia for summary judgment be and the same hereby is granted; and it is,

FURTHER ORDERED: That petitioners' motion for summary judgment be and the same hereby is denied; and it is

FURTHER ORDERED: That a judgment be, and the same hereby, is entered in favor of respondent District of Columbia and against petitioners for the personal property tax years 1978, 1979 and 1980.

/s/ John H. Fauntleroy
Judge

Send copies to:

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Washington, D.C. 20037
Ms. Carolyn Smith
Finance Officer, D.C.

Richard L. Aguglia
Urenthia M. Power
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Washington, D.C.
(202) 737-6255

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF FINANCE AND REVENUE

[SEAL]

November 27, 1979

Itel Data Products Corporation
1055 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

Gentlemen:

We have received your claims for refund of personal property taxes for tax years 1978, 1979 and 1980 on the grounds that personal property located in federally owned buildings is not subject to taxation.

In our opinion, these items must be reported with all other personal property located in the District of Columbia for the purpose of determining the personal property tax.

Therefore, your claims for refund are denied.

Sincerely,

/s/ Jean Oliver
JEAN OLIVER
Acting Associate Director

cc: Patton Boggs & Blow
2550 "M" Street, N.W.
Washington, D.C. 20037

Attn: Richard M. Stolbach

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF FINANCE AND REVENUE

[SEAL]

November 27, 1979

U.S. Trust Corporation
Itel Data Products Corporation (Agent)
1055 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

Gentlemen:

We have reviewed your claims for refund of personal property taxes for tax years 1978 and 1979 on the grounds that personal property located in federally owned buildings is not subject to taxation.

In our opinion, these items must be reported with all other personal property located in the District of Columbia for the purpose of determining the personal property tax.

Therefore, your claims for refund are denied.

Sincerely,

/s/ Jean Oliver
JEAN OLIVER
Acting Associate Director

cc: Patton, Boggs & Blow
2550 "M" Street, N.W.
Washington, D.C. 20037

Attn: Richard M. Stolbach

Office - Supreme Court, U.S.
FILED
OCT 27 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-678

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ITEL CORPORATION
U.S. TRUST COMPANY OF NEW YORK/
ITEL CORPORATION, AGENT,
Petitioners

v.

DISTRICT OF COLUMBIA

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

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ITEL CORPORATION
U.S. TRUST COMPANY OF NEW YORK/
ITEL CORPORATION, AGENT,
Petitioners

v.

DISTRICT OF COLUMBIA

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

ITEL CORPORATION SUBSIDIARIES AND AFFILIATES

Corporate

Itel Corporation (Delaware)
- Itel Finance International N.V. (Netherlands Antilles)
- Itel Navigation Finance, Inc. (Delaware)

Container Division

- Aitel Container do Brasil s/c Ltda.[1]
- Itel Container Corporation (Delaware)
- Itel Container Corporation International (California)
- Itel Container France SARL (France)
- Itel Container International B.V. (The Netherlands)
  - Itel Container Srl (Italy)
  - Itel Shipping, Inc. (Liberia)
  - SSI Containers Ltd. (United Kingdom)[2]

Itel Containers International Corporation (Delaware)
Itel Container International GmbH (West Germany)
Itel Navigation, Inc. (Delaware)
SSI Navigation (Bermuda) Ltd. (Bermuda)
SSI Navigation of Liberia, Inc. (Liberia)
Itel Carina, Inc. (Liberia) SHIP SOLD [2]
Itel Gemini I, Inc. (Liberia) SHIP SOLD [2]
Itel Pegasus, Inc. (Liberia) SHIP SOLD [2]
Itel Taurus, Inc. (Liberia) SHIP SOLD [2]
Itel Volans, Inc. (Liberia) SHIP SOLD [2]
SSI Navigation of Liberia II, Inc. (Liberia) [3]
Itel Intermarine, Inc. (Liberia) SHIP SOLD [2]
SSI Sea I, Inc. (Liberia) SHIP SOLD [2]
SSI Sea II, Inc. (Liberia) SHIP SOLD [2]
SSI Sea III, Inc. (Liberia) SHIP SOLD [2]
SSI Sea IV, Inc. (Liberia) SHIP SOLD [2]
SSI Trilight I, Inc. (Liberia) SHIP SOLD [2]
SSI Trilight II, Inc. (Liberia) SHIP SOLD [2]

Lease Finance Division

All City Collection Bureau, Inc. (New York) [4]
B.E.L. Corporation (New Jersey) [4]
Fairfax Insurance Company Limited (Bermuda)
Health Provider Services, Inc. (New York) [4]
Itel Air Corporation (Delaware) PLANES SOLD
Itel Australia Computer Leasing Pty. Limited (Australia) [5, 6]
Itel Australia Pty. Limited (Australia) [5, 6]
Itel Australia Sales Pty. Limited (Australia) [5, 6]
Itel CAI, Inc. (New York) [4]
Itel Canada Ltd. (Canada) [3]
Itel Capital Corporation (Delaware)
Itel Delta Resources, Inc. (New York) [4]
Itel Far East/Pacific Corporation (Delaware)
Itel Singapore Pte. Ltd. (Singapore) [3]

Itel Financial Services Corporation (Delaware)
Itel Fleet Services Corporation (Delaware)
Itel International Corporation (Delaware)
Itel Deutschland Information Systeme GmbH (West Germany)
IMEC Engineering Services (Sherkate BA Masouliate Mahdood) (Iran)[2]
Itel Europe Corporation (California)
Itel France S.A. (France)
Itel Espanola S.A.[7]
Itel International (Europe) Corporation (Delaware)
Itel Italia S.p.A. (Italy)
Itel Leasing A.G. (Switzerland)
Itel Nederland B.V. (The Netherlands)
Itel Israel Limited (Israel)[3]
Itel (U.K.) Limited (United Kingdom)
Itel Investment Corporation (California)
Itel Investment Management Corporation (California)
Itel Japan Corporation (Japan)[8]
Itel Latinoamericana Corporation (Delaware)
Itel Mexico S.A. de C.V. (Mexico)[9]
Itel Pennsylvania, Inc. (Pennsylvania)[4]
Itel Securities Corporation (California)
Itel Service Bureau, Inc. (New York)[10]
313499 Ontario, Ltd. (Canada)[4]
Shasta Reinsurance Co. Ltd. (Bermuda)

Dispositions [11]

Network Communications Division ASSET SALE	06/01/79
Health Control Corporation	06/15/79
United Medical Data Systems, Inc.	07/06/79
ASD, Inc. (Automotive Services Division)	07/23/79
Itel Scan, Inc. (Polaris)	09/14/79

AutEx Division ASSET SALE		09/27/79
Securities Information Center, Inc.		09/27/79
Itel Equipment Management and Financial Services GmbH		11/15/79
Itel Railcar, Inc.		09/14/79
Banking Data Services Division ASSET SALE		09/28/79
Systemix Corporation ASSET SALE		11/29/79
Onoboco Corporation (formerly Systemix Corporation)	(Diss.)*	05/14/80
CSC Data Services Corporation		11/30/79
Utility Network, Inc.		12/24/79
Belvedere Insurance Company Limited		02/[illegible]/80
Belvedere Underwriting Agents Limited		02/21/80
Itel Beograd I, Inc.	(Diss.)	01/17/80
Itel Beograd II, Inc.	(Diss.)	01/17/80
Brenta, Ltd.		01/25/80
Itel Sales Corporation—International	(Diss.)	01/28/80
Transportation Management Services, Inc.		03/28/80
National Protection Services, Inc. (Audatex)		04/01/80
Maestro Systems, Inc.		03/28/80
Itel Computers New Zealand Ltd.		03/28/80
Car Bulk Carriers, Inc. (YSI Trader) SHIP SOLD		11/08/79
Car Bulk Carriers, Inc.	(Diss.)	04/01/80
Itel Intermarine II, Inc. (Itel America)		04/28/80
Itel Intermarine II (U.S.A.), Inc.		04/28/80
Itel Argentina S.A.		05/15/80
Itel Skandinaviska A.B. (Sweden)		06/11/80
Delta Resources, Inc.		06/30/80
Itel Japan Corporation 99% ASSETS SOLD		06/30/80
Itel Computerprodukte Vertriebsgesellschaft		08/04/80
Itel Hercules, Inc.	(Diss.)	07/30/80

Itel A/S (Denmark)		07/28/80
Itel Services A.G. (Itel Switzerland)		07/28/80
B.E.L. Corporation ASSET SALE		07/00/80
PAS, Inc. ASSET SALE		08/28/80
Itel Gemini I, Inc. (CYS Hope) SHIP SOLD		08/30/79
Transocean Petroleum Carriers (CYS Guardian) SHIP SOLD		08/30/79
Transocean Petroleum Carriers (CYS Guardian)	(Diss.)	08/22/80
SSI Nav. I (Bermuda) Ltd. (Algol) SHIP SOLD		09/27/79
SSI Nav. I (Bermuda) Ltd.	(Diss.)	09/15/80
SSI Nav. II (Bermuda) Ltd. (Alvega) SHIP SOLD		10/10/79
SSI Nav. II (Bermuda) Ltd.	(Diss.)	09/15/80
SSI Nav. III (Bermuda) Ltd. (Alice Redfield) SHIP SOLD		09/27/79
SSI Nav. III (Bermuda) Ltd.	(Diss.)	09/15/80
SSI Trilight I, Inc. (The Ambassador) SHIP SOLD		08/30/79
SSI Trilight II, Inc. (The Odyssey) SHIP SOLD		08/30/79
Itel Intermarine, Inc. (Itel Bonanza) SHIP SOLD		06/13/80
Itel Centroamerica, S.A.		08/20/80
All City Collection Bureau, Inc. ASSET SALE		10/01/80
National Medical Management, Inc. ASSET SALE		10/01/80
S.R.M., Inc. (formerly National Medical Management, Inc.)	(Diss.)	11/10/80
Health Provider Services, Inc. ASSET SALE		10/01/80
Medical Arts Office Services, Inc. ASSET SALE		10/01/80
Itel Carina, Inc. (Itel Carina) SHIP SOLD		08/11/80

Itel Pegasus, Inc. (Itel Pegasus) SHIP SOLD		09/30/80
Itel Taurus, Inc. (Itel Taurus) SHIP SOLD		01/29/81
Itel Volans, Inc. (Itel Volans) SHIP SOLD		08/22/80
Itel Financial Services Corporation	(Diss.)	11/10/80
Itel Colombia S.A.		11/17/80
Itel Mexico S.A. de C.V. ASSET SALE		07/16/80
Itel Air Corporation PLANES SOLD		12/19/80
SSI Sea I, Inc. (Seatrain Independence) SHIP SOLD		01/15/81
SSI Sea II, Inc. (Seatrain Yorktown) SHIP SOLD		01/15/81
SSI Sea III, Inc. (Seatrain Oriskany) SHIP SOLD		01/15/81
SSI Sea IV, Inc. (Seatrain Chesapeake) SHIP SOLD		01/15/81
Itel do Brasil Comercio de Equipamentos Ltda.		04/27/81
Itel Jade, Inc.		05/05/81
Medical Arts Office Services, Inc.	(Diss.)	07/07/81
Itel Hong Kong Ltd.	(Diss.)	07/31/81
Itel Insurance Brokerage Services Corporation	(Diss.)	12/28/81
Itel Air Ltd. (Bermuda)	(Diss.)	02/26/82
Itel Computer Resources, Inc.	(Diss.)	03/26/82
PAS, Inc.	(Diss.)	08/06/82
Itel International Sales Corporation	(Diss.)	08/20/82
Itel Caribe, Inc.	(Diss.)	08/23/82

Itel Container International, Inc. (Delaware)[12]

Rail Division

Green Bay and Western Railroad Company (Wisconsin)

Kewaunee, Green Bay and Winona Transport Company, Inc. (Wisconsin)
Michigan & Western Railroad Company (Michigan)
The Ahnapee and Western Railway Company (Wisconsin)
Winona Bridge Railway Company (Wisconsin)[13]
Hartford and Slocomb Railroad Company (Alabama)
Itel Rail Corporation (Delaware)
Itel Transportation Services Corp. (Delaware)
McCloud River Railroad Company (California)
McCloud River Trucking Company (California)[2]

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[1] 50% of Stock (100,000 shares) owned by Itel Container Corporation International; 50% of stock (100,000 shares) owned by Itel Corporation.

[2] Currently inactive.

[3] 40.3% of stock (500 shares) owned by Itel Navigation, Inc.; 59.7% of stock (740 shares) owned by Itel Container International B.V.

[4] Formerly Data Services.

[5] Liquidation in process.

[6] Two shares stock held in trust for Itel Corporation.

[7] 50% of stock owned by Itel France S.A.; 50% of stock owned by person(s) unrelated to Itel Corporation.

[8] 99% of assets were sold.

[9] 49% owned by Itel Corporation; 51% owned by individuals in Mexico.

[10] Formed in connection with sale of Medical Services Division, formerly Data Services.

[11] Unless noted it represents a sale of stock.

[12] Independent agent of Itel Container International B.V. owned by Mr. Cole unrelated to Itel Corporation.

[13] 35% owned by Green Bay and Western Railroad Company; 65% owned by Burlington Northern.

* Corporation was dissolved.

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CLERK

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-678

ITEL CORPORATION
U.S. TRUST COMPANY OF NEW YORK/
ITEL CORPORATION, AGENT, *Petitioners,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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QUESTION PRESENTED

Whether the Congress, under its constitutional authority to exercise exclusive legislation (jurisdiction) in all cases over the District, may enact a statute authorizing the local collection of tax on privately owned personal property used in a business and located anywhere in the District of Columbia?

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BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT

Under Article I, Section 8, Clause 17 of the Constitution, Congress has authority to exercise exclusive legislation (jurisdiction) in all cases over the District. That authority includes the power to impose taxes.[1] In exercising this authority, Congress enacted a personal property tax for the District of Columbia over eighty years ago, in 1902. Act of July 1, 1902, 32 Stat. 618, Chap. 1352, codified at D.C. Code, 1981, § 47-1507. Both when enacted, and now, § 47-1507 provides in broad terms that personal property located anywhere in the District of Columbia shall be subject to tax except as specifically exempted. It now reads in pertinent part:

> On all tangible personal property assessed at a fair cash value (over and above the exemptions provided in section 47-1508), including vessels, ships, boats, tools, implements, horses and other animals, carriages, wagons and other vehicles, there shall be paid to the collector of taxes of the District of Columbia the rate of tax provided by law.[2]

The categories of personal property exempt from this provision are set forth in D.C. Code, 1981, § 47-1508.[3] They exclude the personal property of benevolent, charitable, and other similar organizations not conducted for private gain, or libraries, household belongings not used for business purposes, works of art on loan to the National Gallery of Art

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[1] See *Neild* v. *District of Columbia*, 71 App.D.C. 306 (1940).

[2] The original enactment is virtually identical. See 32 Stat. 618.

[3] §47-1508. Exemptions.

The following personal property shall be exempt from taxation:

(1) The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain;

(2) Libraries of nonprofit organizations and household belongings located in any dwelling house or other place of abode, or in storage, and boats, not held for sale or rent and not held for use or used in

(Footnote continued on page 3)

for exhibition without charge to the public, and motor vehicles subject to registration fees not part of a merchant's stock-in-trade.

Petitioners Itel and U.S. Trust, private business corporations, own personal property (automatic data processing equipment) which they lease to the federal government in the District of Columbia. The federal government has exclusive use of the equipment with petitioners' obligations being limited to repair and/or replacement of nonfunctioning equipment. Petitioners held title to the leased equipment at all relevant times in this litigation.

Pursuant to D.C. Code, 1981, § 47-1507 (formerly D.C. Code, 1973 ed., § 47-1207), the District of Columbia assessed a tax against the personal property owned and leased by

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[3] Footnote con't from previous page.

any trade or business. For the purposes of this section, the words "household belongings" shall include all libraries, schoolbooks, wearing apparel, family portraits, pictures, furniture, furnishings, rugs, silverware, china, glassware, musical instruments, radios, television sets, refrigerators, food, photographic equipment, bicycles, tools, clocks, watches, jewelry, and other articles of personal adornment, and other tangible personal property (excluding automobiles and other motor vehicles) ordinarily kept and used or held for use by the occupant of any dwelling house or other place of abode for the ordinary purposes of life. For the purposes of this section, the words "trade or business" shall include the engaging in or carrying on of any trade, business, profession, vocation, calling, rental of property, commercial activity, and any other activity carried on or engaged in for livelihood or profit;

(3) Works of art owned by a nonresident of the United States who is not a citizen of the United States lent without charge to the trustees of the National Gallery of Art solely for exhibition without charge to the general public;

(4) Any motor vehicle or trailer registered in accordance with the provisions of Chapter 1 of Title 40, and not comprising any part of the stock-in-trade of a merchant: Provided, that any motor vehicle or trailer comprising all or part of the stock-in-trade of any merchant shall continue to be taxed as provided by law: Provided further, that special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law.

petitioners to the federal government for 1978, 1979 and 1980. Petitioners challenged the assessments on the grounds that the personalty was located either on federally-owned realty, or in federally-owned buildings in the District of Columbia. They alleged that the tax constituted an intrusion of a lesser government upon "exclusive federal enclaves" without specific congressional consent. Therefore, they paid the personal property taxes assessed, totalling approximately $500,000, and filed a claim for refund, which was denied by the District*.

Subsequently, petitioners filed a refund suit in the Tax Division of the Superior Court of the District of Columbia. The parties filed cross motions for summary judgment. In an order filed April 29, 1981, the Tax Division judge granted summary judgment in favor of the District of Columbia. Petitioners lodged an appeal from this order. On July 21, 1982, a three judge panel of the District of Columbia Court of Appeals ruled unanimously in the District's favor. The Court rejected petitioners' contention that the tax constituted an "unwanted intrusion" by "lesser governmental entities" in areas of primary federal interest:

> But regardless of how such areas are characterized, all parties must concede that Congress has the power to authorize the application of a tax therein. (Pet., App. at 2a)
>
> * * * * *
>
> The tax here at issue was enacted not by an independent sovereign, or even a partially-independent governmental unit such as the District of Columbia government, but by the Congress itself. It can hardly be said that this amounts to an intrusion of federal prerogatives. (Pet., App. at 4a)

This petiton for a writ of certiorari to review the decision of the District of Columbia Court of Appeals followed on October 19, 1982.

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* Although the tax has been imposed and collected since 1902, this is the first court challenge on these grounds.

REASONS FOR DENYING THE WRIT

Petitioners assert that this case merits the Court's attention on the ground that it purportedly concerns "the ability of the national government to operate without interference from the municipal government it created to deal with purely local matters" (Petition p. 14). That characterization is inaccurate. This case simply concerns the interpretation of a taxing statute Congress enacted in 1902 to provide revenues for the District of Columbia Government. Specifically, it concerns whether, in enacting that statute, Congress intended an exemption for which it made no provision, namely, an exemption for privately-owned property used to generate private business income when that property is used on federally-owned land or in federally-owned buildings. The District of Columbia Court of Appeals was clearly correct in ruling that there is no basis upon which the courts could properly rewrite the statute in question in the manner sought by petitioners.

The terms of the relevant District of Columbia statute make it clear that Congress intended that there should be a broad tax on all private personal property used in business in the District, unless specifically exempted. Section 47-1507 expressly states that the tax shall apply to "all tangible personal property". Section 47-1508 lists the categories of property that shall be exempt. The legislative history unmistakably shows that the kind of property Congress intended to reach was property used to generate business income:

> It is inconceivable that Congress will permit personal property in the District of Columbia to remain untaxed. That capital *employed remuneratively* under the special protection of incorporation laws shall pay nothing for the support of the government has never been the practice in any State or Territory of the Union; and Congress has never contemplated such exemption in the District of Columbia. All property, both real and personal, should pay its just share for the support

> of the government. (S.Rept. No. 1035 (57th Cong., 1st Sess. 1902) at 4.) (Emphasis supplied.)

The personal property at issue here, data processing equipment owned by private corporations, clearly falls within the broad terms of § 47-1507, and is not exempted under any of the provisions of § 47-1508. Because this personal property is used to generate business income, it is also clearly within the scope of personal property Congress intended to be taxed.

Petitioners argue that the court below engaged in a literal interpretation of the statute. The D.C. Court of Appeals, however, interpreted the statute in light of both its language and apparent purpose, concluding "on the basis of both . . . . one would have to conclude that ITEL'S property is not exempt". (Pet. at 3a). Petitioners assert that the interpretation below

> will result in the taxation of privately-owned personal property used in carrying on the professional work of members of Congress and located in their Congressional offices, of Government workers in their offices, of military personnel in their offices at installations such as Bolling Air Force Base and Fort McNair, and of members of the federal judiciary. Equally significant, the District Government can now rely upon the similar absence of an exemption for *federal* personal property in D.C. Code § 47-1508 . . . . . to authorize the taxation of federal personal property. (Emphasis theirs; Pet. at 12).

The results petitioners fear do not follow from the Court of Appeals' analysis. Since the statute was directed at property which generates business income, the examples given by petitioners of the use of private property by public officials in performing their public duties, are clearly beyond the statute's purview. Similarly, the context in which the 1902 statute was enacted shows that it was never intended to reach federally-owned personalty. At the time the statute in question here was enacted, federally-owned personalty had been specifically exempted by Congress from District of Columbia personal property taxes for

over 25 years.[4] There is no analogous ground to interpret the statute to exempt petitioners private personalty used to generate private business income.

Petitioners assert that the decision below allows the District of Columbia to tax private property on property under exclusive federal jurisdiction without the federal government's consent, "a power possessed by none of the sovereign states". (Pet. at 14). But as stated by the court below:

> Since § 47-1507 was enacted by Congress, it would constitute congressional consent if any were required. In the words of the D.C. Circuit, "[i]f the consent restriction applies to the statute here involved [§ 47-1507], it has been met, as consent could be evidenced in no clearer fashion than by the fact of enactment itself." *Mercury Press* v. *District of Columbia, supra* at 204, 173 F.2d at 637. Thus even if the analysis used in state cases were applicable here, the result would still be that the tax could be applied to personal property on federal land. (Pet. at 6a - 7a; footnote omitted).[5]

Finally, petitioners assert that this case presents the same kind of "overly expansive interpretation" by the District of its taxing power that has required the United States Government to resort to litigation in two other cases to prevent interference with its activities in the District of Columbia. (Pet. at 13). However, in *United States* v. *District of Columbia*, C.A. No. 82-0923 (decided September 3, 1982;

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[4] See, the Act of March 3, 1875, 17 Stat. 501, Chap. 162, § 1 and the Act of March 3, 1877, 19 Stat. 396, Chap. 117, § 1. That exemption was not affected by the Act of July 1, 1902. See, Section 8 of the Act of July 1, 1902, 32 Stat. 629.

[5] As recently as last year, the District of Columbia Circuit stated the following with respect to a constitutional claim and local District taxes:

> . . . . . constitutionally grounded federal tax immunity from state taxation would not bar the tax in question. The D.C. sales tax was enacted by Congress, not a state. *United States of America* v. *District of Columbia*, 669 F.2d 738, 740 (1981).

appeal pending), a suit for declaratory judgment regarding the status of the United States Capitol Historical Society for local tax purposes, the trial judge based his decision on a finding that the Society was a federal instrumentality. In *United States* v. *District of Columbia*, C.A. No. 81-1532 (D.D.C. - pending), which does involve the same issue of statutory interpretation as this case, the United States is a party to the suit because, pursuant to a contractural agreement, it agreed to reimburse a private party (Itel) for its share of local personal property taxes. The United States will have ample opportunity, at both the trial and appellate levels, to present its arguments to the federal courts.

Petitioners have presented no ground warranting review of this case by this Court under its certiorari authority.

CONCLUSION

The petition for writ of certiorari should be denied.

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